

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY  
07/13/2001

\*\*\* FILED \*\*\*  
07/19/2001  
CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000190

Docket Code 512 Page 1  
FILED: \_\_\_\_\_

STATE OF ARIZONA  
v.  
SHANE PATRICK FLEMING

SUSAN J KAYLER  
BRIAN F RUSSO

FOUNTAIN HILLS CITY COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

FOUNTAIN HILLS CITY COURT  
Cit. No. #0281934  
Charge: A. DRIVING ON SUSPENDED  
DOB: 05/28/63  
DOC: 11/09/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Fountain Hills City Court, the exhibits made of record and the Memoranda of submitted.

Appellant was found guilty after a trial in absentia on March 21, 2001. The only issue on appeal is the denial of the Defendant's Motion to Continue the trial date. The trial date was scheduled on February 15, 2001 at a pretrial conference where Appellant was represented by counsel. Prior to that date, scheduled court appearances had been continued twice on motions by the Appellant. The trial court had noted when it granted the second continuance that it would be the last continuance in the case. On March 20, 2001, Appellant's counsel faxed a Motion to Continue the March 21, 2001 trial citing scheduling conflicts as the reason for the request. That motion was denied by the court. The record does not support Appellant's contentions that a subsequent motion to continue was filed prior to the trial citing as the reason for the request to continue that Appellant was scheduled for surgery.

Motions to continue are directed to the discretion of a trial court. It is not the role of an appellate judge to second guess the trial court's ruling on a motion to continue, but to review the trial court's decision for an abuse of discretion.<sup>1</sup> There was no apparent abuse of discretion in this case. Counsel for Appellant had been warned that there would be no further continuances. When a previous Motion to Continue was denied, Appellant's counsel assured the court that substitute counsel would be available, and substitute counsel did appear for Appellant at the pretrial hearing on February 14, 2001. The record does not support Appellant's contentions regarding a denial of his Motion to Continue citing Appellant's surgery as the reason for the request to continue. The record does not indicate that such a request was ever ruled upon by the trial court. As such, this Court cannot consider the issue as the matter has not been preserved for appeal purposes.

Finding no abuse of discretion in the denial of the Motion to Continue, the trial court properly proceeded to a trial in absentia.

IT IS ORDERED affirming the judgment of guilt and sentence imposed.

IT IS FURTHER ORDERED remanding this matter to the Fountain Hills City Court for further proceedings.

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<sup>1</sup> *State v. Barreras*, 181 Ariz. 516, 892 P.2d 852 (1995).